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7 GENERAL ELECTRIC CAPITAL CORPORATION

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10 **UNITED STATES BANKRUPTCY COURT**
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12 **EASTERN DISTRICT OF CALIFORNIA**
13
14 **FRESNO DIVISION**

15 In re) Case No. 09-16328-B-11
16)
17 PRIDE TRANSPORTATION, INC.,) Chapter 11
18)
19 Debtor.) R.S. No.: HRH-1
20)
21) MOTION FOR RELIEF FROM STAY
22) AND MEMORANDUM OF POINTS AND
23) AUTHORITIES IN SUPPORT THEREOF
24)
25)
26)
27)
28)

[Pursuant to 9014-1(f)(1)]

Hearing:

Date: January 28, 2010
Time: 9:00 A.M.
Dept.: B
Crtrm: 12, 5th Floor
JuDge: Hon. W. Richard Lee
Address: 2500 Tulare Street
Fresno, CA

21 Movant GENERAL ELECTRIC CAPITAL CORPORATION (hereinafter "Movant")
22 hereby moves the Court for an Order granting relief from the automatic stay under 11 U.S.C. §
23 362(a) in the above-captioned Chapter 11 Bankruptcy case to permit Movant and its successors and
24 assigns, to exercise the rights granted under the written agreement and related documents affecting
25 personal property of Debtor, as more fully described herein. This motion is made and based upon
26 the following facts and circumstances.

27 1. At all times herein mentioned, Movant was and now is a Corporation duly authorized
28 to conduct business and doing business within California.

2. On or about July 6, 2009, Debtor commenced the above-captioned bankruptcy case

1 by filing a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code
2 (“Bankruptcy Code”).

3 3. This Court has jurisdiction in this core proceeding pursuant to 28 U.S.C. § 1334(a)
4 and (b), 28 U.S.C. § 157(a) and (b)(2)(G). Pursuant to 28 U.S.C. § 1409(a), this proceeding is
5 properly commenced and prosecuted in this Court in which Debtor’s Chapter 11 case is pending.

6 4. On or about December 20, 2005, Debtor entered into a Master Lease Agreement (the
7 “Agreement”) with Movant’s predecessor-in-interest to lease the following equipment (the
8 “Equipment”):

9 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604458

10 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604459

11 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604460

12 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604461

13 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604462

14 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604463

15 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604464

16 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604468

17 4. The Agreement was signed by Debtor, evidencing its obligation to pay for the
18 Equipment and granting Movant and its predecessor in interest a security interest therein. A true
19 and correct copy of the Agreement is attached as Exhibit “1” to the Declaration of Maria Robles in
20 support of Movant’s Motion for Relief (hereinafter referred to as the “Robles Declaration”) and
21 incorporated herein by reference.

22 5. In an abundance of caution, Movant’s predecessor-in-interest perfected its security
23 interest in the Equipment by filing UCC-1 Financing Statements with the California Secretary of
24 State, true and correct copies of which are collectively attached to the Robles Declaration as Exhibit
25 “2” and incorporated herein by reference.

26 6. Plaintiff, is successor in interest by assignment. On or about June 28, 2007,
27 Plaintiff’s predecessors-in-interest assigned the lease to Movant. A true and correct copy of this
28 assignment is attached to the Robles Declaration as Exhibit "3" and incorporated herein by this

1 reference.

2 6. Movant therefore holds all rights, title and interest in the Agreement and the
3 Equipment.

4 7. Pursuant to the terms of the Agreement, Debtor was to make monthly installments
5 pursuant to the schedule set forth in the Lease Schedule on page 1 of the Agreement.

6 8. On or about August 1, 2009, Debtor defaulted under the terms of the Agreement by
7 failing to make the monthly installment then due. Debtor has also failed to become current
8 thereafter or to make any other payments thereafter.

9 9. As of the instant Petition filing, there was due, owing and unpaid to Movant the total
10 sum of \$72,417.91 pursuant to the Agreement, as well as attorney's fees and costs, as also provided
11 for in the Agreement.

12 10. Movant may not proceed to recover and sell the Equipment due to the Debtor's
13 present Bankruptcy filing. As the Agreement contains a \$1.00 buyout, it is not a true lease.
14 However, neither the Debtor nor the Trustee has any equity in the leased equipment. A true and
15 correct copy of relevant portions of Debtor's Schedules is attached to the Robles Declaration as
16 Exhibit "4" and incorporated herein by reference.

17 **GROUND FOR RELIEF UNDER 11 U.S.C. § 362(d)**

18 Cause for relief from the automatic stay under 11 U.S.C § 362(d)(1) exists because the
19 interests of Movant in the Equipment is not adequately protected. Debtor is not making any
20 payments pursuant to the Agreement, nor have the Debtor or Trustee assumed the subject Lease
21 Agreement. Movant has not been granted such other relief as will result in the realization of the
22 indubitable equivalent of Movant's interest in the Equipment.

23 The Agreement provides that in the event of default, Movant will be entitled to reasonable
24 attorney's fees and court costs incurred with respect thereto. Movant has retained the law firm of
25 HEMAR, ROUSSO & HEALD, LLP to represent its interests in attempting to effectuate collection
26 of the amount due under the Agreement.

27 WHEREFORE, it is respectfully requested that the Court issue an Order as follows:

28 1. Terminating the automatic stay of 11 U.S.C. § 362(a), effective immediately, to

1 permit Movant and any agents, successors-in-interest and assignees to exercise any and all rights
2 under the Agreement;

3 2. Terminating the automatic stay of 11 U.S.C. § 362(a) to permit Movant to recover
4 and sell the Equipment pursuant to state law remedies; and

5 3. Waiving the 10-day stay provided by FRBP 4001(a)(3).

6 **CONCLUSION**

7 Based upon the foregoing, Movant respectfully requests that this Court grant the motion for
8 relief from the automatic stay.

9 DATED: December 29, 2009

HEMAR, ROUSSO & HEALD, LLP

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/s/ *Raffi Khatchadourian*

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By: _____

RAFFI KHATCHADOURIAN

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Attorneys for Movant,

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GENERAL ELECTRIC CAPITAL CORPORATION

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 GENERAL ELECTRIC CAPITAL CORPORATION (hereinafter “Movant”) hereby
3 submits the following memorandum of points and authorities in support of its motion for relief from
4 the automatic stay.

5 **I. PRELIMINARY STATEMENT**

6 On or about December 20, 2005, Debtor entered into a Master Lease Agreement (the
7 “Agreement”) with Movant’s predecessor-in-interest to lease the following equipment (the
8 “Equipment”):

9 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604458

10 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604459

11 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604460

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15 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604464

16 2006 Vanguard Dry Van Trailer, Serial Number 5V8VA53236M604468

17 The Agreement was signed by Debtor, evidencing its obligation to pay for the Equipment
18 and granting Movant and its predecessor in interest a security interest therein.

19 In an abundance of caution, Movant’s predecessor-in-interest perfected its security interest
20 in the Equipment by filing UCC-1 Financing Statements with the California Secretary of State.

21 Plaintiff, is successor in interest by assignment. On or about June 28, 2007, Plaintiff’s
22 predecessors-in-interest assigned the lease to Movant.

23 Movant therefore holds all rights, title and interest in the Agreement and the Equipment.

24 Pursuant to the terms of the Agreement, Debtor was to make monthly installments pursuant
25 to the schedule set forth in the Lease Schedule on page 1 of the Agreement.

26 On or about August 1, 2009, Debtor defaulted under the terms of the Agreement by failing
27 to make the monthly installment then due. Debtor has also failed to become current thereafter or to
28 make any other payments thereafter.

1 As of the instant Petition filing, there was due, owing and unpaid to Movant the total sum of
2 \$72,417.91 pursuant to the Agreement, as well as attorney's fees and costs, as also provided for in
3 the Agreement.

4 Movant may not proceed to recover and sell the Equipment due to the Debtor's present
5 Bankruptcy filing. As the Agreement contains a \$1.00 buyout, it is not a true lease. However,
6 neither the Debtor nor the Trustee has any equity in the leased equipment.

7 **II. MOVANT SHOULD BE GRANTED RELIEF FROM THE AUTOMATIC STAY OF**
8 **11 U.S.C. § 362(A) TO EXERCISE ITS RIGHTS REGARDING THE EQUIPMENT**

9 Section 362(d) of the Bankruptcy Code states that:

10 "On request of a party in interest and after notice and a hearing, the court
11 shall grant relief from the stay provided under subsection (a) of this section,
12 such as by terminating, annulling, modifying, or conditioning such stay -

13 (1) for cause, including the lack of adequate protection of an interest
14 in property of such party in interest; or

15 (2) with respect to a stay of an act against property under
16 subsection(a) of this section, if--

17 (A) the debtor does not have an equity in such property; and

18 (B) such property is not necessary to an effective
19 reorganization."

20 The facts of this case demonstrate that the automatic stay should be lifted "for cause." The
21 Bankruptcy Code mandates that secured creditors must, at a minimum, be afforded a reasonable
22 assurance that the value of their security interests in property of a Debtor is and will continue to be
23 "adequately protected" by the Debtor. Metropolitan Life Ins. v. Murel Holding Corp., 75 F.2d 941
24 (2nd Cir. 1935). The Debtor bears the burden of proving that the creditor's interest in the property
25 is adequately protected. Guavin v. Wagner, 24 B.R. 578, 580 (9th Cir. BAP 1982). If the Debtor
26 fails to meet this burden, the Creditor is entitled to relief under §362(d)(1). In re Winslow Center
27 Associates, 32 B.R. 685, 687 (Bankr. E.D. Pa. 1983).

28 In the present case, Movant's interest in the Equipment is not being adequately protected.

1 The Agreement is currently in default and neither the Debtor nor the Estate have any interest or
2 equity in the Equipment and the Equipment is not necessary to an effective reorganization.

3 **III. CONCLUSION**

4 Based upon the foregoing, Movant respectfully requests that this Court grant the motion for
5 relief from the automatic stay.

6 DATED: December 29, 2009

HEMAR, ROUSSO & HEALD, LLP

7 /s/ *Raffi Khatchadourian*

8 By: _____

RAFFI KHATCHADOURIAN

Attorneys for Movant,

GENERAL ELECTRIC CAPITAL CORPORATION

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